

### **DETAILED ACTION**

This action is in response to the request for continued examination following a decision on appeal on December 30, 2009, in which claims 1, 2, 4, 5, 9, 14, 17 and 18 are affirmed and claim 3 is reversed. Claims 1-2, 4, 9, 14-15 and 17-18 are pending. Claims 1-2, 4, 9, 14-15 and 17-18 represent apparatus and method for identifying a requested level of service for a transaction.

### ***EXAMINER'S AMENDMENT***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

John P. Wagner (Reg. No. 35,398), the attorney in record, gave authorization for this Examiner's Amendment over the telephone during an interview. The claims amendments are as follow:

### **PLEASE AMEND THE CLAIMS AS FOLLOWS:**

1. (Previously Presented) An apparatus for identifying a requested level of service for a transaction, comprising:

computer readable storage media; and

computer readable program code stored in said storage media, comprising:

a) program code for prompting a user to select a requested level of service for said transaction;

b) program code for assigning said requested level of service to said transaction;

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c) program code for selecting a backup level of service; and

d) program code for assigning said backup level of service to said transaction when said requested level of service is unavailable, wherein said transaction is directed to a network device that is best able to provide said requested level of service for processing said transaction, wherein said best able to provide is determined by program code of a load balancer as to what is a nearest level of service to said requested level of service.

2. (Original) An apparatus, as in claim 1, wherein said transaction is a packetized signal comprising at least a data packet, and wherein a service tag is associated with said data packet by said program code for assigning said requested level of service, said service tag including said requested level of service.

3. (Cancelled)

4. (Original) An apparatus, as in claim 1, wherein said requested level of service is a predefined service category.

5. (Cancelled)

6. (Cancelled)

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7. (Cancelled)

8. (Cancelled)

9. (Previously Presented) A method for requesting a level of service for a transaction on a network, comprising:

selecting said requested level of service for said transaction via a user interface;

and

assigning said requested level of service to said transaction;

selecting a backup level of service; and

assigning said backup level of service to said transaction when said requested level of service is unavailable, wherein said transaction is directed to a network device that is best able to provide said requested level of service for processing said transaction, wherein said best able to provide is determined by program code of a load balancer as to what is a nearest level of service to said requested level of service.

10. (Cancelled)

11. (Cancelled)

12. (Cancelled)

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13. (Cancelled)

14. (Previously Presented) An apparatus for routing a transaction over a network based on a requested level of service associated with said transaction, comprising:

a number of computer readable storage media; and computer readable program code stored in said number of storage media, comprising:

- a) program code for selecting said requested level of service for said transaction;
- b) program code for assigning a service tag to said transaction, said service tag including said requested level of service, and said program code assigning parts of said service tag at more than one point on said network;
- c) program code for reading said requested level of service from said service tag;
- d) program code for directing said transaction over said network based on said requested level of service read from said service tag;
- e) program code for selecting a backup level of service; and
- f) program code for assigning said backup level of service to said transaction;

wherein said transaction is directed to a network device that is best able to provide said requested level of service for processing said transaction, wherein said best able to provide is determined by program code of a load balancer as to what is a nearest level of service to said requested level of service.

15. (Original) An apparatus, as in claim 14, wherein said transaction is directed over said network to a device best providing said requested level of service.

16. (Cancelled)

17. (Original) An apparatus, as in claim 14, wherein said service tag is read by program code at more than one point on said network.

18. (Original) An apparatus, as in claim 14, further comprising program code for changing said requested level of service included on said service tag.

19. (Cancelled)

20. (Cancelled)

***Allowable Subject Matter***

Claim 9 is allowed. If applicant overcome the 101 rejection, the claims as amended above will be allowed. The reason for allowance will be provided in the next Office Action.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-2, 4, 14-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant discloses in claims 1-2, 4, 14-15, "computer readable storage media...". The broadest reasonable

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interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent, and therefore “computer readable storage medium” has been interpreted as in the signal category.

Furthermore, in paragraph [0046], Griesemer et al (U.S. 20010011306) discloses “although CD-ROM 315 is shown as an exemplary computer readable storage medium, other computer readable storage media including floppy disk, tape, flash memory, system memory, and hard drive may be utilized. Additionally, a data **signal embodied in a carrier wave (e.g., in a network including the Internet) may be the computer readable storage medium.**” Appropriate correction is required.

In order to overcome the 101 rejection, Examiner suggests to Applicants to change "computer readable storage media" as “non-transitory computer readable storage media”.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to El Hadji M Sall whose telephone number is 571-272-4010. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/El Hadji M Sall/

Examiner, Art Unit 2457

/ARIO ETIENNE/

Supervisory Patent Examiner, Art Unit 2457